IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

AMDOCS (ISRAEL) LIMITED, an Israeli Corporation, Plaintiff, v. OPENET TELECOM, INC., a Delaware Corporation, and OPENET TELECOM LTD., an Irish Corporation, Defendants.	Case No. 1:10-CV-910 (LMB/TRJ) **JURY TRIAL DEMANDED**

OPENET'S RESPONSE TO AMDOCS' MOTION PURSUANT TO RULE 15(a)(2) FOR LEAVE TO FILE AN AMENDED COMPLAINT

Defendants Openet Telecom, Inc. and Openet Telecom Ltd. ("Openet") submit the following response to Plaintiff Amdocs (Israel) Ltd.'s ("Amdocs") Motion Pursuant to Rule 15(a)(2) for Leave to File an Amended Complaint (Dkt No. 31).

I. AMDOCS SHOULD BE ORDERED TO STREAMLINE ITS CONTENTIONS AS A CONDITION TO ADDING NEW PATENTS TO THE CASE

Because Amdocs does not explain why it could not include the two new patents in its original complaint filed in August 2010, Amdocs' proposed amendment is untimely and threatens to disrupt the tight discovery schedule set for this case. Nonetheless, Openet does not want this lawsuit to be delayed and does not want the Court or the parties to be burdened with the second lawsuit that Amdocs has threatened to file on the additional patents if its amendments are denied. Accordingly, Openet informed counsel for Amdocs that it would consent to the proposed amended pleading if Amdocs agreed to certain procedures designed to streamline this case and to ensure that the original schedule could be met. Amdocs did not agree. Therefore, Openet requests that the Court order the following mandatory disclosures to ensure that the current case schedule is not further disrupted by the addition of two new patents to this case:

- By Tuesday, February 1, Amdocs shall serve infringement contentions for each accused infringing product for the two additional patents Amdocs seeks to add to the case.
- By Tuesday, February 1, for both the two current patents-in-suit and the two additional patents, Amdocs shall (1) identify no more than four claims per patent that it asserts against Openet; (2) identify the specific products accused of infringing each patent claim; and (3) amend its previously served infringement contentions to provide factual support for each product it accuses of infringement.
- By Tuesday, February 15, Openet shall serve invalidity contentions for the two patents Amdocs seeks to add to the case and amend its previously served invalidity contentions.

Under the current schedule, the parties are scheduled to exchange opening expert reports on March 11 and rebuttal expert reports on April 1. Discovery closes on April 15, with a pretrial conference scheduled for April 21. These additional disclosures will provide an orderly way to bring two new patents into the case while maintaining the current schedule.

II. LIMITING THE NUMBER OF CLAIMS ASSERTED WILL HELP EXPEDITE THE CASE AND LIMIT PREJUDICE TO OPENET

Amdocs is presently asserting 39 clams of the two original patents-in-suit, U.S. Patent Nos. 6,836,797 ("the '797 patent") and 7,631,065 ("the '065 patent"). If Amdocs asserts all 39 claims of the two new patents (U.S. Patent Nos. 6,947,984 ("the '984 patent") and 7,412,510 ("the '510 patent")) that it seeks to bring into this lawsuit, Amdocs would be asserting 78 patent claims against Openet. Further, Amdocs has accused at least five Openet products of infringing the Amdocs patents.

Amdocs cannot credibly state that it intends to assert at trial 78 patent claims against five Openet products. Such allegations could require up to 390 proofs and 390 rebuttals at trial and could overwhelm the jury. Because both parties agree that trial should last 5-7 days, as a practical matter Amdocs will be forced at some point before trial to significantly narrow the number of claims it asserts against Openet and identify the specific products its accuses of infringing each claim. Indeed, as the plaintiff, Amdocs has presumably already prepared analyses of the handful of claims it intends to take to trial.

Moreover, even if it would be possible for Openet to prepare defenses against 78 patent claims before serving opening expert reports on March 11, 2011, Openet should not be forced to incur the substantial burden of conducting discovery and preparing defenses for that many claims when most claims will almost certainly never be asserted at trial. Openet therefore requests that as a condition to bringing two new patents into the litigation, Amdocs be ordered to streamline its infringement contentions by identifying the claims it asserts against Openet so the parties can spend the remaining time in discovery focusing on the real issues in dispute.

Additionally, Openet requests that Amdocs identify with greater specificity which products its accuses of infringing the patents-in-suit and which claims its asserts against each such product. To date Amdocs has accused five separate Openet products of infringing the patents-in-suit (Fusion Works, Fusion Works Convergent Mediation, Convergent Charging, Network Edge Rating, and Policy Manager) but has only provided infringement contentions with respect to one such product (Fusion Works). Accordingly, to the extent Amdocs decides to continue to allege infringement against additional products, Openet further requests that Amdocs identify the claims it believes infringed by such products and the factual bases for such contentions to further streamline matters.

III. AMDOCS HAS FAILED TO EXPEDITE THIS LITIGATION

The additional disclosures requested by Openet will help expedite this case, something Amdocs has failed to do thus far. As the Court was advised in Openet's Motion to Compel Inventor Depositions (Dkt No. 36), Amdocs filed the present lawsuit over five months ago on August 16, 2010 and then waited until November 3, 2010 to serve its complaint. During this time, Amdocs ought to have collected and prepared its documents for production and analyzed the patent claims it intended to assert against Openet given the well-known schedule for patent cases set by this Court.

On December 1, 2010, the Court issued its Scheduling Order, and one week later, on December 7, 2010, Openet served its first set of discovery requests on Amdocs. On December 22, 2010, Amdocs served its objections to Openet's discovery requests but then waited until January 7, 2011 to begin its document production. Between January 7 and January 24, Amdocs produced approximately 35,000 pages of documents. Then, late on the night of January 24, Amdocs produced 175,000 pages of documents to Openet. It is not clear why Amdocs, despite having over five months to collect and prepare documents for production, delayed the bulk of its document production until shortly before depositions are scheduled to begin. In contrast, Openet substantially completed its non-email document production (over 540,000 pages) over two weeks ago, on January 12, 2011.

With respect to the proposed amended pleading, Amdocs offers no explanation of why it did not assert these two additional patents in its original complaint. Amdocs does not point to any new information or specific discovery it obtained in the more than 500,000 pages of documents Openet produced in this litigation that permitted it to only now form a belief that Openet infringes the two additional patents. Moreover, Amdocs does not explain why it waited until the last day to amend pleadings and did not disclose these new patents earlier, particularly given that the parties exchanged infringement contentions three weeks ago and invalidity contentions two weeks ago. Amdocs should not be permitted to delay this litigation or otherwise prejudice Openet's defenses by adding two new patents without conditions that will help expedite matters for all parties and ensure that the current trial schedule is maintained.

IV. CONCLUSION

For the foregoing reasons, Openet requests that as a condition of Amdocs being granted leave to amend its pleadings to assert two additional patents against Openet, Amdocs be ordered to (a) serve infringement contentions for the additional patents by February 1, 2011; and (b) identify no more than four asserted claims per patent and the specific products accused of infringing each claim, amending its previously served infringement contentions as necessary, by February 1, 2011. Openet will then serve invalidity contentions for the additional patents and amending its previously served contentions as necessary by February 15, 2011.

Dated: January 26, 2011

Respectfully submitted,

/s/ Brian H. Pandya

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's EM/ECF system on this 26th Day of January 2011, with other counsel of record being served by regular mail.

/s/ Brian H. Pandya
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